

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

WAYNE L. SLUSS, R.PH.,
RESPONDENT.

FINAL DECISION
AND ORDER

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Wayne L. Sluss, R.Ph.
5933 Taylor Avenue
Racine, WI 53403

Pharmacy Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. That Wayne L. Sluss, Respondent herein, was at all times relevant to this proceeding duly licensed under the provisions of Chapter 450, Wis. Stats., to practice as a registered pharmacist in the State of Wisconsin.

2. That Wayne L. Sluss holds a license as a pharmacist, #0007870-9, granted April 11, 1969.

3. That the Respondent's date of birth is February 24, 1945 and current address is 5933 Taylor Avenue, Racine, Wisconsin 53403.

4. That on an unknown number of occasions from approximately 1984 through July 1987, the Respondent diverted and self-administered unknown amounts of controlled substances, from Walgreen's Pharmacy, 3701 80th Street, Kenosha, Wisconsin, his employer. Respondent diverted and self-administered Percocet (oxycodone), Percodan (oxycodone), amphetamines, various codeine-containing substances, Valium (diazepam), Ativan (lorazepam) and Xanax (alprazolam).

5. That on July 27, 1987, Respondent began outpatient treatment for drug abuse with the Institute for Family Therapy, 4811 South 76th Street, Suite 2, Greenfield, Wisconsin 53220, under the direction of counselor Jim Welsh. That Respondent subsequently transferred to outpatient treatment for drug abuse with Catalyst, 2266 North Prospect Avenue, Milwaukee, Wisconsin 53202, under the direction of counselor Jim Welsh. Attached as Exhibit A is a copy of a letter from Respondent's current counselor outlining the Respondent's current rehabilitative efforts.

6. That Respondent has been diagnosed as suffering from opioid dependence, amphetamine dependence, and Valium abuse.

CONCLUSIONS OF LAW

1. The Wisconsin Pharmacy Examining Board has jurisdiction over this matter and authority to take disciplinary action against the Respondent pursuant to Wis. Stats. sec. 450.10(1), and Wis. Adm. Code Ch. Pharm 10.

2. The Wisconsin Pharmacy Examining Board is authorized to enter into the attached Stipulation pursuant to Wis. Stats. sec. 227.44(5).

3. Percocet (oxycodone), Percodan (oxycodone) and amphetamines are Schedule II Controlled Substances as defined in Wis. Stats. sec. 161.01(4) and 161.16.

4. Codeine-containing substances are Schedule III Controlled Substances as defined in Wis. Stats. sec. 161.01(4) and 161.18.

5. Valium (Diazepam), Ativan (lorazepam), and Xanax (alprazolam) are Schedule IV Controlled Substances as defined in Wis. Stats. sec. 161.01(4) and 161.20.

6. Respondent engaged in unlawful and unprofessional conduct contrary to Wis. Stats. secs. 161.38(1), 161.41, 450.10, and 450.11 and Wis. Adm. Code sec. Phar 10.03(3) in that he obtained Schedule II Controlled Substances, Schedule III Controlled Substances, and Schedule IV Controlled Substances, other than in legitimate practice, and as prohibited by law.

7. Respondent engaged in unlawful and unprofessional conduct contrary to Wis. Stats. secs. 450.10(1)(a)3, and Wis. Adm. Code sec. Phar 10.03(4) and (7) in that he has demonstrated chemical abuse and dependency and has practiced while under the influence of drugs.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

That the Stipulation of the parties, attached hereto, is accepted.

IT IS FURTHER ORDERED that effective March 1, 1989, the pharmacist license of Wayne L. Sluss, Respondent, shall be SUSPENDED for a period of not less than four (4) years.

(a) The suspension shall be stayed for a period of three (3) months, conditioned upon compliance with the conditions and limitations outlined in paragraph (b), below. In addition, the following apply:

i. The Respondent may apply for consecutive three (3) month extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed on the Respondent's practice during the prior three (3) month period.

ii. If the Board denies the petition by the Respondent for an extension, the Board shall afford an opportunity for hearing in accordance with the procedures set forth in Wis. Adm. Code Ch. RL 1 upon timely receipt of a request for hearing.

iii. Upon successful compliance for a period of four (4) years with the terms of paragraph (b), below, the Board shall grant a petition by the Respondent for return of full licensure.

iv. In consideration of the Respondent's regime of treatment commenced on July 27, 1987, the Board reduces the four (4) year compliance period by eighteen (18) months.

v. The applications for extension under (a)i. and all required reports under (b)v. shall be due on the following dates:

June 1, 1989, and each and every September 1, December 1, March 1, and June 1 thereafter, through and including December 1, 1991.

(b) CONDITIONS OF STAY.

i. The Respondent must remain in a program acceptable to the Board for the treatment of chemical dependency. As a part of treatment, the Respondent must attend therapy on a schedule that is recommended by his therapist; attendance, however, shall be required at least once weekly. In addition, the Respondent must attend Alcoholics Anonymous or Narcotics Anonymous at least one time per week. After one (1) year, the Respondent may seek a modification of the requirements in this paragraph, based upon the independent professional opinion and recommendation of his primary therapist.

ii. Upon request of the Board, the Respondent must provide the Board with current releases complying with state and federal laws, authorizing release of counseling, treatment and monitoring records.

iii. The Respondent must remain free of alcohol, and prescription drugs and controlled substances not prescribed for a valid medical purpose during the period of limitation.

iv. During the first two years of stayed suspension, the Respondent must participate in a program of random, witnessed monitoring, on the basis of at least 8 times per month for controlled substances and alcohol in his blood and/or urine.

During the remaining period of the stayed suspension, the Respondent must submit to blood and/or urine screens on the basis of at least 4 times per month. If the therapist supervising the Respondent's plan of care, his employer, or the Pharmacy Examining Board deems that additional blood or urine screens are warranted, the Respondent must submit to those screens.

The Respondent shall be responsible for obtaining a monitoring facility and reporting system acceptable to the Board, as well as for all costs incurred in conjunction with the monitoring and reporting required.

To be acceptable, the monitoring facility must agree to provide random and witnessed gatherings of specimens for evaluation. It must further agree to file an immediate report with the Pharmacy Examining Board upon such failures by Respondent to comply with the terms of this Order as: if the Respondent fails to appear upon request; or if a drug or alcohol screen proves positive; or if the Respondent refuses to give a specimen for analysis upon a request authorized under the terms of this Order.

v. The Respondent shall arrange for written quarterly reports to the Pharmacy Examining Board from his employer, if any, evaluating his work performance; from the monitoring facility providing the dates and results of the screenings performed; and from the counselor evaluating the attendance and progress in therapy as well as evaluating the level of participation at AA/NA meetings. The employer reports must include a description of any access to controlled substances by the Respondent.

vi. The Respondent shall report to the Board within five (5) days of any changes in employment status.

vii. The Respondent may not be employed as or work in the capacity of a "managing pharmacist" as the term is defined in Wis. Adm. Code sec. Phar 1.02(2) or in the capacity of a "pharmacist-in-charge" as that term is defined in Wis. Adm. Code sec. Phar 1.02(5). The respondent may not have an ownership interest in any pharmacy.

viii. The Respondent may not place or be responsible for the placing of any orders for the purchase of any Schedule II, III, or IV Controlled Substances.

ix. The Respondent must inform all current and prospective employers of this Stipulation.

x. The Respondent shall provide to the Pharmacy Examining Board accountability audits at his place of employment of Schedule II Controlled Substances performed according to the following schedule:

- (1) Monthly during the first six months of employment under this Order, and
- (2) Every six months for the remaining period of employment after this Order.

The audit shall be conducted by and certified by a licensed pharmacist other than Respondent, who shall be approved by the Board. Any discrepancy or missing drugs indicated by the audits shall be immediately reported in writing to the Board.

(c) Upon successful compliance with the provisions of paragraph (b) for a period of two (2) years, the Respondent may petition the Board in conjunction with any application for an additional stay to revise or eliminate any of the above conditions.

(d) Violation of any of the terms of this Order may result in a summary suspension of the Respondent's license; the denial of an extension of the stay of suspension; the imposition of additional conditions and limitations; or the imposition of other additional discipline.

(e) This Order shall become effective on the dates specified, except for provision (b)iii., which is effective the date of signing.

PHARMACY EXAMINING BOARD

By: W. R. Schaefer
A Member of the Board

2/15/89
Date

JB:jrb
DOEATTY-154

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
WAYNE L. SLUSS, R.PH.,	:	
RESPONDENT.	:	

The parties in this matter agree and stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation of Wayne L. Sluss' licensure by the Division of Enforcement (Case File 87 PHARM 39). Mr. Sluss consents to the resolution of this investigation by stipulation and without the issuance of a formal disciplinary complaint and hearing.
2. The Respondent understands by signing this Stipulation that he voluntarily and knowingly waives his rights in this matter, including the right to a hearing on the allegations against him, at which time the State has the burden of proving the allegations by clear, satisfactory and convincing evidence, the right to confront and cross-examine the witnesses against him, the right to call witnesses on his own behalf and to compel their attendance by subpoena, the right to testify in his own behalf, the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision, the right to petition for rehearing and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.
3. The Respondent admits the allegations and statements found in the attached Final Decision and Order.
4. The Respondent and the Complainant urge the Pharmacy Examining Board to adopt this Stipulation and the attached Final Decision and Order in this matter.
5. If the terms of this Stipulation and attached Final Decision and Order are not acceptable to the Board, then none of the parties shall be bound by any of the terms.
6. The attached Findings of Fact, Conclusions of Law, Final Decision and Order may be made and entered in this matter by the Wisconsin Pharmacy Examining Board, without prior notice to any party.
7. All parties agree that Counsel for the Department of Regulation & Licensing, Division of Enforcement and the Board Advisor appointed in this matter may appear before the Wisconsin Pharmacy Examining Board to argue in favor of acceptance of this stipulation and the entry of the attached Findings of Fact, Conclusions of Law, Final Decision and Order.

8. That this agreement in no way prejudices the Pharmacy Examining Board from any further action against Respondent based on any acts not stated in the present Findings of Fact which might be violative of the Wisconsin Pharmacy Examining Board Statutes and Rules.

9. That if this Stipulation is adopted by the Wisconsin Pharmacy Examining Board, the attached Order shall become effective as stated in the order.

February 6, 1989
Date

Feb. 3 1989
Date

Jonathan Becker
Jonathan Becker, Attorney
Department of Regulation & Licensing
Division of Enforcement

Wayne L. Sluss
Wayne L. Sluss, Respondent

JB:jrb
DOEATTY-153

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each and the identification
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Pharmacy Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Pharmacy Examining Board

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Pharmacy Examining Board.

The date of mailing of this decision is February 17, 1989.

WLD:dms
886-490

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employee trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally

disposing of the application for rehearing or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) Copies of the petition shall be served personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmation, vacation or modification of the order or decision under review. Such notice other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

February 16, 1989

1400 E. WASHINGTON AVENUE
P.O. Box 8935
MADISON, WISCONSIN 53708
608 266-2112

Wayne L. Sluss, R.Ph.
5933 Taylor Avenue
Racine, WI 53403

Jonathan Becker
Attorney at Law
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

RE: In the Matter of Disciplinary Proceedings Against
Wayne L. Sluss, R.Ph., Respondent.

Dear Mr. Sluss and Mr. Becker:

This letter is to inform you that the Pharmacy Examining Board accepted the Stipulation of the parties in the above-referenced matter at its board meeting on February 15, 1989. Accordingly, enclosed please find a copy of the Final Decision and Order entered.

As you are aware, the Order sets forth an initial four year stayed suspension, but grants 18 months credit in view of previous treatment. In essence, the period of compliance with the conditions for receiving a stay of the suspension will run for two and a half years.

In reviewing the requirements set forth in (b) CONDITIONS OF STAY for the next two and a half years, the board noted that paragraph (b)(iv) states that during the first two years of the stayed suspension, random screens are required 8 times per month, and reduced to 4 monthly screens for the remainder of the stayed suspension period. A question arose as to whether or not, given the 18 month credit granted, that this section should be interpreted by the board as also providing an 18 month credit to be applied toward the two year requirement for 8 monthly screens. The board decided that such interpretation would be appropriate in recognizing treatment obtained.

The thrust of this interpretation is that respondent, under (b)(iv), will be required to obtain 8 monthly screens only over the next 6 months. Thereafter, for the remaining 2 years of the limitations, respondent is obligated for only 4 random screens per month.

If you have any questions regarding the foregoing interpretation of the random screen provisions with the board's order, please do not hesitate to contact either this writer or the board office.

Regulatory Boards

Accounting, Architects, Professional Engineers, Designers and Land Surveyors, Barbers, Bingo, Boxing, Charitable Organizations, Chiropractic, Cosmetology, Dentistry, Funeral Directors, Hearing Aid Dealers and Fitters, Medical, Nursing, Nursing Home Administrator, Optometry, Pharmacy, Private Detectives, Psychology, Real Estate, and Veterinary.

Committed to Equal Opportunity in Employment and Licensing

Mr. Sluss and Mr. Becker
February 16, 1989
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Thank you very much.

Very truly yours,

Donald R. Rittel, Attorney
Office of Board Legal Services
(608) 267-7217

Enclosure

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